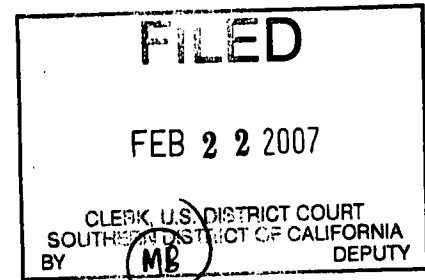


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Telephone: (619) 557-7032

Attorneys for Plaintiff
UNITED STATES OF AMERICA



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

07CR 0416 BEN ✓

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ELIADIO DAMIAN-BAUTISTA (1),)
)
Defendant.)

Magistrate Case No. 07MJ0220

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Carol C. Lam, United States Attorney, and Steven De Salvo, Assistant United States Attorney, and defendant ELIADIO DAMIAN-BAUTISTA, by and through and with the advice and consent of defense counsel, Andrew Lah, Esq., Federal Defenders of San Diego, Inc., that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) and (v)(II).

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SDD:rp:2/9/07

2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **March 7, 2007**.

4. The material witnesses, Isuaro Miguel-Navarro, Crispin Pascual-Cruz and Isai Martinez-Lopez, in this case:

- a. Are aliens with no lawful right to enter or remain in the United States;
- b. Entered or attempted to enter the United States illegally on or about January 25, 2007;
- c. Were found in a vehicle driven by codefendant near Jamul, California and that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States;
- d. Were paying \$1,500-\$1,600 to others to be brought into the United States illegally and/or transported illegally to their destination therein; and,
- e. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

- a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;
- b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

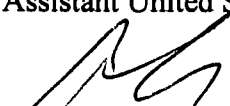
13 Respectfully submitted,

14 CAROL C. LAM
15 United States Attorney

16 Dated: 2/22/07.

17 
18 STEVEN DE SALVO
19 Assistant United States Attorney

20 Dated: 2/16/07.

21 
22 ANDREW LAH
23 Defense Counsel for Eliadio Damian-Bautista

24 Dated: 2/16/07.

25 
26 ELIADIO DAMIAN-BAUTISTA
27 Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 2/22/07


United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff

vs.

Eliadio Damian-Bautista,
et al.

Defendant(s)

CRIMINAL NO. 07MJ220

ORDER

RELEASING MATERIAL WITNESS

Booking No.

On order of the United States District/Magistrate Judge, Major

IT IS HEREBY ORDERED that the following named person heretofore
committed to the custody of the United States Marshal as a material witness be
released from custody: (Bond Posted / Case Disposed Order of Court).

I suaro Miguel-Navarro

DATED: 2-22-07

Barbara L. Major
UNITED STATES DISTRICT/MAGISTRATE JUDGE

RECEIVED

DUSM

OR

W. SAMUEL HAMRICK, JR. Clerk

by

J. Ferrante
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff

vs.

Eliadio Damian-Bautista,
et al.

Defendant(s)

CRIMINAL NO. 07MJ220

ORDER

RELEASING MATERIAL WITNESS

Booking No.

On order of the United States District/Magistrate Judge, Major.

IT IS HEREBY ORDERED that the following named person heretofore
committed to the custody of the United States Marshal as a material witness be
released from custody: (Bond Posted / Case Disposed / Order of Court).

Crispin Pascual-Cruz

DATED: 2-22-07

Barbara L. Major
UNITED STATES DISTRICT/MAGISTRATE JUDGE

RECEIVED

DUSM

OR

W. SAMUEL HAMRICK, JR. Clerk

by

J. Perriault
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff

vs.

Eliadio Damian-Bautista,
et al.

Defendant(s)

CRIMINAL NO. 07MJ220

ORDER

RELEASING MATERIAL WITNESS

Booking No.

On order of the United States District/Magistrate Judge, Major.

IT IS HEREBY ORDERED that the following named person heretofore
committed to the custody of the United States Marshal as a material witness be
released from custody: (Bond Posted / Case Disposed Order of Court).

Isai Martinez-Lopez

DATED: 2-22-07

Barbara L. Major
UNITED STATES DISTRICT/MAGISTRATE JUDGE

RECEIVED _____
DUSM

OR

W. SAMUEL HAMRICK, JR. Clerk

by

J. Perault
Deputy Clerk